

# **News Articles on SLAPPs**

**Prepared in May 1999**

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## TRACKING THE LEGISLATURE

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OREGONIAN

13 MAY 99

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### HOT TOPICS

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#### Protection from public-participation suits passes House

SALEM — A bill that would make it harder to sue people who testify before public bodies easily passed the Oregon House on Wednesday on a 49-9 vote.

House Bill 2805 is aimed at cutting off lawsuits designed to discourage activism, particularly in cases where local residents are fighting a proposed commercial or housing development. These have become known as "Slapp suits," for Strategic Lawsuits Against Public Participation.

The bill would give people civil immunity for statements made before public bodies, unless they are knowingly false and are not material to the issue. It also would award attorney's fees to defendants who prevail by showing they are the victim of a Slapp suit.

Several such cases have cropped up around the state. For example, in Banks, 18 residents were hit with an \$18 million fair-housing lawsuit after they complained that a 200-home subdivision would overwhelm schools. Although they prevailed, they wound up with attorney's bills of \$1,000 apiece.

Rep. Kurt Schrader, D-Canby, the bill's sponsor, said that a compromise had been worked out with the Oregon Building Industry Association and that there no longer is significant opposition to the measure. Schrader said the bill is necessary to ensure that people aren't discouraged from participating in government decisions.

— Jeff Mapes

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STATESMAN JOURNAL - 13 MAY 99

#### HOUSE SUPPORTS TESTIMONY PROTECTION

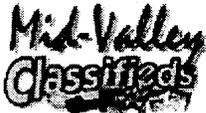
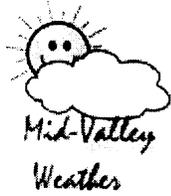
A bill aimed at protecting people who testify at public proceedings from being sued for their comments won approval Wednesday in the Oregon House.

The bill, endorsed on a 44-8 vote, takes aim at lawsuits that critics say are sometimes used by special interests to try to punish citizens who speak against them at public hearings.

Under the bill, those who participate in public proceedings would be granted immunity in most cases.

Those who knowingly make false statements that are not material to the issue under consideration wouldn't be protected.

Statesman Journal news services



# Gazette-Times

The Internet Edition of the  
Corvallis Gazette-Times, Corvallis, OR



## House passes legislation to stop SLAPP suits

By JOHN BUTTERWORTH Gazette-Times reporter

SALEM — Legislation to help stop lawsuits aimed at quieting public dissent passed in the state House 49-9 Wednesday morning. House Bill 2805 is aimed at stopping SLAPP suits, or strategic lawsuits against public participation.

The bill will now move to the Senate Judiciary Committee. Although it overwhelmingly passed the full House, it is expected to face a bigger battle in the Senate by building and development interests.

The House Judiciary Committee reviewed the bill in March after receiving statewide testimony about the abusive lawsuits.

Witnesses said they'd ended up having to defend themselves in court after making statements against various land-use and development proposals.

House Bill 2805 would protect citizens from lawsuits for presenting facts or stating opinions at public meetings, but not for such statements in letters to newspapers.

Backers are pleased with Wednesday's vote in the House.

"I think it's a fantastic big step forward for citizen involvement," said Evan Manvel from 1000 Friends of Oregon. "Public participation is critical to statewide planning and Oregon democracy."

The battle over the Senate version will heat up greatly, said Manvel.

"There are some particular interests trying to kill the bill because public participation doesn't help them," he said.

Liz Frankel from the Corvallis League of Women Voters agreed with Manvel.

"The vote in the House was excellent — you can't get much better than that," she said, "but I don't think Chandler pushed that hard in the House. He will in the Senate."

Chandler is a lobbyist for the Oregon Building Industries Association, a statewide home builders organization.

Another concern for Frankel is the possibility the bill will mutate in the Senate Judiciary Committee.

"The real key for now is not seeing so much as a comma change in the bill," she said.

Several provisions of the House version dropped as it passed out of committee and to the floor.

The bill provides for courts to award attorneys' fees, other costs and even punitive damages to defendants winning a suit under the bill's provision that gives immunity for testimony in public meetings.

"It's got to hold as it is," Frankel said.

John Butterworth covers public safety and rural Benton County for the Gazette-Times. He can be reached by phone at 758-9530 or e-mail at [jbutterworth@gtconnect.com](mailto:jbutterworth@gtconnect.com).

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## Anti-SLAPP measure easily clears Oregon House

By David Hudson  
 First Amendment Center

5.17.99

- What do you think? Have your say In The Forum.

The Oregon House of Representatives has overwhelmingly passed a bill 49-9 designed to stop lawsuits that are filed in an effort to silence public dissent. The measure takes aim at SLAPP suits, otherwise known as strategic lawsuits against public participation.

Proponents of so-called anti-SLAPP legislation insist the measures are necessary to protect citizens from being sued for their criticism of a variety of businesses, such as land-development and building companies, at city council meetings and other public hearings.

The legislation states that a person "is not civilly liable for their speech, influencing action, or otherwise participating in the processes of government, regardless of their intent or purpose."

The House bill contains certain provisions designed to strengthen protection for citizens' free-speech rights that were not contained in an earlier anti-SLAPP bill first introduced in the Senate.

The House bill contains a provision allowing a court to quickly dismiss a groundless lawsuit. "The court shall expedite any motion for summary judgment filed by a defendant that asserts the immunity provided by this section," the bill reads.

The bill also provides "reasonable attorneys fees" and other legal costs to defendants in SLAPP suits. Finally, the measure allows those who successfully defeat a SLAPP suit to obtain punitive damages from the person who filed the suit.

"The key to this bill is that it provides a way for early dismissal of these suits before citizens are burdened with crushing legal

bills," said Jeffrey Lamb, chairman of Oregon Communities for a Voice in Annexation. He told *free!* that the other key features of the bill are the availability of punitive damages and the recovery of legal fees.

Lamb's group has shifted its support away from an earlier measure introduced in the Senate to the House bill. "We have put all our eggs in one basket," Lamb said.

Several other groups in Oregon lobbied House legislators to adopt an anti-SLAPP bill, including the League of Women Voters and 1000 Friends of Oregon.

"Individuals aren't the only ones harmed by SLAPP suits," said Liz Frankel of the Corvallis League of Women Voters. "SLAPP suits are all about community intimidation," she told *free!*

"The overwhelming vote in the House (on May 12) sends a clear message to the Senate," Lamb said. "We just hope the measure does not become bogged down in a Senate committee. We know the opposition will be stronger in the Senate."

Frankel called the House vote a "major step towards protecting public participation." She says the goal now is to get the measure through the Senate without changes.

Lamb and Frankel both say they expect a tougher fight in the Senate, as lobbyists for builders and land developers will increase their efforts against the measure.

The bill has been referred to the Senate Judiciary Committee, which has not set a hearing date.

At least a dozen other states have passed similar laws to protect people from meritless lawsuits. A California bill containing features of an anti-SLAPP law was signed into law in 1992. A similar New York act took effect in 1993. Other states with anti-SLAPP laws on the books include Delaware, Georgia, Maine, Massachusetts, Minnesota, Nebraska, Nevada, Oklahoma, Rhode Island, Tennessee and Washington.

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# Mid-Valley Sunday

Corvallis Gazette-Times  
Albany Democrat-Herald

April 25, 1999

## Prospects rise on SLAPP protection

### Mid-Valley Sunday

A bill to protect participants in land-use cases from lawsuits intended to shut them up will get out of committee this week, Rep. Lane Shetterly says.

The Dallas Republican heads the civil law Judiciary Committee in the House. He said Friday that HB 2805 will have a work session his week.

"Yes, I think we have the votes to pass it out," he said.

Shetterly didn't know and the road schedule did not yet show just when the bill's work session would be held.

HB 2805 has been sought by Jeff Lamb of Philomath, chairman of Oregon Communities for a Voice in Annexations, and several others.

It is intended to protect people against so-called SLAPPs or Strategic Lawsuits Against Public Participation.

Such suits have been filed in other states - and reportedly threatened or filed in some Oregon cases as well - against people who spoke out against development proposals.

Shetterly said the bill as introduced would have provided absolute immunity for people taking part in the land-use decision process. But he said the committee is having the measure amended so that people could not be protected for intentionally false defamatory statements.

In addition, Shetterly said, his incl has cleared a related bill making it easier for courts to issue summary judgments in such cases.

"It will reduce the time and expense entailed in defending frivolous suits," Shetterly said.

In other legislative develop-

ments of interest to the mid-valley:

• Two bills to authorize a study and pilot project of dredging on segments of the Willamette River remain pending before a subcommittee of Ways and Means.

Shetterly refused to give up on the bills Friday, saying there was still a chance they could get funded by Ways and Means and pass the Legislature.

• Rep. Jeff Kropf, R-Halsey, insisted last week that his proposal to authorize corporal punishment in public schools was still alive. "I assure you it's not dead," he declared.

The bill has had one hearing. In most cases bills die in committee if they have not had a second hearing by the end of April.

• Kropf noted that House Transportation, on which he served, had sent to the floor with a "do pass" recommendation HB 2522, which is of interest to mid-valley motorists and bicyclists.

HB 2522 makes it legal for a bicycle to pass a vehicle on the right with due care if the roadway is wide enough, as long as the cyclist doesn't interfere with a motorist making a legal right turn. The bill also makes it illegal to ride the wrong way on roads and bike lanes.

• State Rep. Barbara Ross, D-Corvallis, testified in favor of a local-option funding bill before a Senate committee.

Senate Bill 550 would allow school districts to raise a small amount of money locally to add to revenue from the state. Ross says she's also working behind the scenes to launch bipartisan talks on stable funding for schools.

Any such talks would have to

consider how to make schools accountable, how to keep costs from skyrocketing and whether there are new sources for school funds, she said.

• The House Ways and Means subcommittee for education passed a higher education budget of \$87.6 million. Ross backed the plan, which would fund a new approach to dividing up the money among colleges. But the plan also calls for almost \$5 million in cuts to administration, supplies and some salaries and benefits.

Separate bills would offer \$1 million to Western Oregon University for library construction, \$2 million for statewide programs like the extension service and a roughly \$5 million engineering package.

• Ross also said she backed a failed effort this week to debate a Senate bill that would require background checks on people buying guns at gun shows.

Representatives introduced a motion on the House floor to bring the bill, SB 700, out of committee for open debate. Democrats backed the motion but lacked the numbers to win a vote.



Lane Shetterly



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## The Associated Press

THE FULL STORY

### Bill would discourage lawsuits intended to dampen political involvement

Thursday March 25, 1999  
*From The Associated Press*

SALEM, Ore. (AP) -- A dozen witnesses appealed to legislators to protect Oregonians from lawsuits intended to discourage them from getting involved in land-use and other local political decisions.

Most of the witnesses Wednesday had been targets of such suits, including 78-year-old Portia Foster of Eugene, who was among five defendants in a 1996 defamation case in Yachats. The defendants won after a five-day jury trial, Foster said, but ended up with attorney fees of \$7,000 apiece.

"I have never written anything defamatory, but that's what they claimed," Foster said of the lawsuit, which resulted from an effort to block a building permit on an undersized lot near a historic county road and hiking trail.

Even the threat of such suits, she said, is "increasingly a method of shutting people up."

The testimony came before the House Judiciary Civil Law Committee during a hearing on House Bill 2805, which has been introduced by Rep. Kurt Schrader, D-Canby, to discourage the so-called SLAPP suits -- Strategic Lawsuits Against Public Participation.

Mitch Rohse of the Department of Land Conservation and Development said such suits stifle opposition and have "a chilling effect on public debate."

He said nine states, including California, have laws protecting against frivolous lawsuits, and 10 other states are considering it. Gov. John Kitzhaber

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supports the idea.

HB2805 would grant immunity "for any statement" made by someone participating in the decision-making process before a public entity. It says defendants should be awarded attorney fees and other expenses if they are sued and a judge finds that their statements are immune.

"It will protect citizens against very sophisticated, well-heeled, and sometimes well-intentioned, special-interest groups with a lot of power," Schrader said. "We need more citizen participation, not less."

Several members of the House committee said they are sympathetic to the issue but are concerned that the immunity clause would go too far.

"This is a very broad immunity," said Rep. Max Williams, R-Tigard. "I'm very concerned about closing the courthouse door to a particular group of people."

The committee chairman, Rep. Lane Shetterly, R-Dallas, said the bill might be revised to address the immunity concerns.

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Statesman Journal

# Legislature

## LAWSUITS STIFLE CITIZEN PARTICIPATION, SOME SAY

# Panel considers public protection

Ten other states have approved such legislation, and 10 more are contemplating it.

BY KRISTEN GREEN  
Statesman Journal

When Portia Foster learned that her town's city attorney had a conflict of interest in a land-use matter and hadn't disclosed it, she wrote a letter to the editor of her coastal paper.

The 78-year-old Yachats woman didn't expect to end up fighting a lawsuit that she believes was meant to shut her up.

"It has certainly shut down public participation on the coast in a very dramatic way," Foster said.

A bill before the Legislature would protect citizens who participate in local government decisions from Strategic Lawsuits Against Public Participation, known as SLAPP suits.

Ten other states, including California, have approved similar legislation and another 10 are considering it.

Rep. Kurt Schrader, who introduced the bill, said he wants to ensure that Oregonians continue to give their valuable input to local governments without feeling threatened.

"This is just good public policy," Schrader said at a public hearing in the House Judiciary Committee on Wednesday.

SLAPP suits, he said, are discouraging people who are at the heart of local government decisions.

"All you need to do is have a little intimidation, and you shut people down in a hurry," Schrader said.

But committee member Rep. Bill Witt, R-Portland, said he is bothered by the amount of protec-



RENEE BYER / Statesman Journal

**SPEAKS FOR BILL:** Mitch Rohse testifies before the House Judiciary Committee hearing on a bill that would protect citizens from frivolous lawsuits intended to intimidate residents and keep them from commenting on government decisions.

tion the bill offers citizens.

"The thing that concerns me is HB 2805 will allow a person to go to a public hearing and defame another individual," Witt said.

Mitch Rohse, a representative of the Department of Land Conservation and Development, said he doesn't think the legislation

gives people a "license to lie." He said about 80 percent of SLAPP suits are dismissed.

"It is an emotional issue sometimes when people don't want to hear the opposition or what the dissenting views are," he said.

Jeff Lamb, a Philomath resident and chairman of Oregon

Communities For A Voice In Annexations, said if legislators don't find a way to combat SLAPP suits, fewer people will voice their opinions.

"A lot of people probably don't have the resources financially or emotionally to go through that fight," he said.

Lakeview, OR  
 (Lake Co.)  
 Lake Co. Examiner  
 (Cir. W. 3,015)

MAY 2 1 1998

Allen's P. C. B Est. 1888

## Give voters a choice

CityWatch, a Salem watchdog group concerned about the increasing costs of annexations and the growing threats of suits against those who speak up about them, field a petition Friday which could give Salem voters the right to vote on annexations.

More and more citizens who speak out against development are being slapped down as developer Larry Epping threatened to do last year to Jerry Scott of Citizens for Responsible Growth.

The problem of these suits is so severe that the Department of Land Conservation and Development is sponsoring legislation intended to protect the First Amendment Rights of citizens who wish to speak in public hearings.

Each time a city council approves an annexation it obligates community taxpayers to pay for almost all of the costs of developing the land. Under current law taxpayers have no vote.

When taxpayers have the right to vote on annexations it will be harder to intimidate us and we'll have a voice in the financial well being of our community.

Richard Reid  
 president, CityWatch  
 Salem

# Salem group wants votes on annexations

801  
 By JOHN MARIKOS  
 Valley Business

SALEM - CityWatch, a group promoting what it calls controlled growth, has petitioned to place on the November ballot a measure giving citizens the right to make decisions on annexations to cities. The president of CityWatch says the reason is to protect citizens who speak out from lawsuits filed by developers.

President Richard Reid said, "More and more citizens who speak out against development are being SLAPPED down as developer Larry Epping threatened to do last year to Jerry Scott of Citizens for Responsible Growth."

By SLAPP, he referred to the phrase "strategic lawsuits against public participation". He said the petition will allow citizens to have a say over development without the threat of SLAPP suits.

Charles Landman, paralegal with the Oregon Department of Justice, wrote in "An Introduction to SLAPP Suits" that more citizens are being sued by developers for speaking out in public meetings against development. He said these legal actions often take the form of defamation suits.

In a letter dated Oct. 1, 1997, attorney David Hilgemann, representing Epping, sent a letter to Scott requesting that he retract information he placed in the Argument Statement for the Marion County Voters' Pamphlet about Epping's residential development profits.

The letter said, "If you persist in publishing this statement, it is my client's intention to pursue all of his civil rights concerning this matter, including suit for damages."

"It was kind of a shock," said Scott, owner of Jerry Scott Appraisers. "I don't have deep pockets and the developer does. I couldn't defend myself."

Scott, who is vice president of CityWatch, said he didn't withdraw the information and there was no lawsuit.

"If good people shut up because they're afraid to lose money, then our society will end up not having anyone left to defend it," Scott said. "I have a significant number of people who say, 'I have some data but I don't want to be drawn into it.'"

See Initiative, Page 3

Salem, Or.  
(Marion Co.)  
Valley Business  
(Cir. Weekly)

MAY 28 1998

Allen's P.C.B. Est. 1888

# Initiative

Continued from Page One

In St. Paul, Mary McKay is being sued for defamation of character by developers Dan and Jennifer Smith for comments made in a letter to the editor of the Graphic, a Newberg paper. The reporter said in the article about the suit and growth in St. Paul that



LAMB

22 St. Paul residents would not comment publicly about growth issues because of fear even though they were opposed to the way it was happening in St. Paul.

Jeff Lamb, chairman for Oregon Communities for a Voice in Annexations, said he expects 40 cities in Oregon to pass voter approved annexation laws by the end of the year. Before the May 19th election, 12 cities had passed the measure. Last week three of the four cities voting on the voter approved annexation laws approved them. In the fourth city, Florence, Lamb said Lane County officials inserted incorrect information into the ballot that swayed the election. In the summary of Measure 20-97, a Two-Year Levy to Maintain Current Services, it says, "This measure shall become effective only if Measure 1 [Voter Approval for Annexation] is not approved by the voters." Lamb said he will be filing a lawsuit against the City of Florence.

This is not about anti-growth," said Lamb, owner of Auto Cars Unlimited in Philomath. "People are not foolish. Growth offers opportunity and people will always want opportunity. This is about how fast we grow, who pays for growth and do we as taxpayers have a voice in that debate."

Lamb said that voters are approving most of the annexations proposed in their cities. He said in 20 years, Corvallis has approved 47 annexations and denied 37. With last week's vote, voters in McMinnville have approved six of eight annexations. Newberg has approved three out of four annexations. Philomath voters, he said, have approved all 19 of their annexations.



SCOTT

"If developers know they are up against the voters, the town usually gets a better product," Lamb said.

Lamb said the elections can take place at the May or November elections at no cost to the developer. If the developer wants to put the annexation on the ballot in a special election, Philomath and Corvallis charge the developers half the cost of the election, he said.

Vickie Hardin Woods, Salem's urban planning administrator, said she's been in her position for almost two years and in that time every annexation has been approved by the city. Records show that in 1996, 11 annexations involving 147 acres were approved. In 1997, 13 annexations involving 104 acres were approved. So far in 1998, two annexations involving nearly 69 acres have been approved. Eleven applications involving 400 acres have been submitted this year.

Eric Meurer, executive director of Marion-Polk Building Industry Association, said he was disappointed about the voter approved annexation petition.

"We have a long established policy that created the Urban Growth Boundary," he said. "Inside the UGB you should have development."

He said voter approved annexations could interfere with efforts to plan for extending city services. This, he said, could create uncertainty, increasing costs and the level of anxiety.

"In Salem, voters are more attuned to this than in other areas. Voters may not adopt this method," Meurer said.

Larry Epping, co-owner of Larry Epping Building Company, said voter approved annexations goes against the land use planning in effect since the early 1980s. He said if you leave it up to the people to vote you don't need a UGB or a comprehensive plan anymore.

Larry Glassock, president of Salem Economic Development Corporation, said, "I oppose annexation by popular vote. We have a very good land use planning system in effect since the early 1970s."

He said voter approved annexation would dismantle the planning system piece by piece.

"You don't plan part of a sewer. It's part of a system," Glassock said.

"If we have the best land use system in the United States then why are we in a land use revolt?" asked Lamb.

The petition is being reviewed by the city attorney's office. When the review is finished, the petition will be ready for signatures.

Meanwhile the Citizen Involvement Advisory Committee has conducted two hearings with testimony from citizens who have been victims of SLAPP suits. LCDC has submitted draft legislation to limit SLAPPS to the Department of Administrative Services.

Roseburg, OR  
 (Douglas Co.)  
 News-Review  
 (Cir. D. 20,729)  
 (Cir. S. 21,156)

JUN 3 - 1998

Allen's P. C. B Est. 1888

# Balance needed in criticizing land use

## From the Corvallis Gazette-Times

State officials are concerned about lawsuits that intimidate citizens from speaking out in land-use cases.

We say protect citizens with appropriate legislation, but also be cautious to keep people responsible for what they say.

Good government in a representative democracy requires that citizens be able to speak their minds and ask their elected officials to help them.

That's why SLAPPs are drawing more concern in Oregon. The acronym stands for strategic lawsuit against public participation. These happen when citizens speak out about such issues as land developments or environmental regulations and are sued by the developers or companies affected by the rules.

The main purpose of such suits is to intimidate the individuals — and other citizens — from continuing to speak out.

The suits often seek huge sums — one national study found the average claim was \$9 million. Even the threat of such a lawsuit can silence someone who, although convinced her views are right and can win in court, feels overwhelmed by the prospect of legal fees and years of litigation. A threat to sue one leader against a zoning change might frightened dozens of neighbors into silence as well.

At least nine states have adopted laws to protect citizens from SLAPPs.

There's enough concern about SLAPPs to expect Oregon lawmakers to tackle the issue next year. It's important that any legislation they adopt will safeguard citizen's right to speak out but still hold them responsible for what they say.

Coos Bay, OR  
(Coos Co.)  
World  
(Cir. D. 31,000)

MAY 14 1998

# Law may stymie lawsuits aimed at stifling debate

**SLAPPs: Land-use advocates try to stop strategic lawsuits against public participation.**

SALEM (AP) — Terry Fleming spoke out against development. And he got sued.

He got the news just before a 1996 public meeting about a new subdivision in Banks, northwest of Hillsboro. Fleming, who contended the local school couldn't handle more students, was named in a \$18.8 million complaint along with city councilors and other community advocates.

The developer alleged citizens in the city of 560 were discriminating against children by campaigning against the 300 new houses.

Fleming had spoken against the development at earlier meetings, but the lawsuit persuaded him to keep quiet.

"It put a muzzle on us," Fleming said. "Nobody wanted to say anything because they were afraid they'd get sued, too."

Even though the lawsuit was

thrown out, Fleming and his family were stuck with more than \$10,000 in legal bills. And it convinced Fleming that Oregonians who speak out in public forums need protection.

"If something doesn't change, there isn't going to be anybody talking at public meetings at all," he said.

Land-use advocates say lawsuits — or threats of suits — are becoming more common in Oregon.

The typical result: Citizens who might speak out against developers or proposed projects are staying silent.

Most of the suits are flimsy, but they have been effective at quieting opposition.

Some states have tried to limit the suits, which have been dubbed SLAPPs — strategic lawsuits against public participation.

Oregon could join those ranks next year.

Last week the Citizen Involvement Advisory Committee of the Department of Land Conservation and Development will get its first peek at a possible bill that could stymie SLAPPs in Oregon. The pro-

posal could be submitted to the 1999 Legislature.

Citizens who say they've been the targets of such suits would be able to recoup their attorneys' fees.

But Jon Chandler, chief lobbyist for the Oregon Building Industries Association, said the state proposal appears too broad.

"Developers shouldn't be allowed to bully people, but good heavens, this thing is a mess," he said. "There is no recourse to statements that are truly slanderous or defamatory."

Nationally, SLAPPs have been filed for activities such as circulating a petition, writing a letter to the editor, speaking at public meetings or demonstrating for law changes.

But they are most common in development debates.

"The land-use arena seems to be the perfect place for these to show up," said Celeste Doyle of the Oregon Attorney General's office.

Some Oregon cases that appear to follow the SLAPP formula include:

■ St. Paul resident Mary McKay is being sued by Newberg investor Dan Smith for her remarks in a letter to the editor. Few St. Paul residents will now speak to reporters

about Smith's development plans.

■ A Tillamook County developer sued a number of people and public boards including the Netarts Steering Committee. "His strategy appears to be 'winning through intimidation,'" said Vic Affolter, planning director.

■ A Columbia County commissioner threatened to sue anybody who circulated a recall petition.

Jeff Lamb, executive director of Oregon Communities for a Voice in Annexations, said a ban on SLAPPs is long overdue.

"It's an outrage," he said. "We feel these suits are being used by development interests to silence the public. Even if you win, you don't want to say anything the next time around."

Robert Liberty, executive director of land-use watchdog 1000 Friends of Oregon, said legal intimidation isn't limited to SLAPPs. In many cases, developers and builders simply exhaust the financial resources of opponents.

In some cases, the developers can write off legal fees as a cost of doing business, he said. "Citizens don't get to do that."

# Proposal could limit nuisance lawsuits

■ STATESMAN JOURNAL★

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**Proponents say the suits are designed to stifle public comment.**

BY JAMES SINKS  
Statesman Journal

The last thing Terry Fleming expected was a lawsuit.

But he spoke his mind — and he got sued.

He got the news just before a 1996 public meeting about a controversial new subdivision in tiny Banks, northwest of Hillsboro.

Fleming, a software salesman who'd said the local school couldn't accommodate any more students, was named in a \$18.8 million complaint along with city councilors and other community advocates.

The developer alleged citizens in the city of 560 were discriminating against children by campaigning against the 300 new houses.

Fleming had spoken against the development at earlier meetings, but the lawsuit convinced him to keep

quiet. "It put a muzzle on us," Fleming said. "Nobody wanted to say anything because they were afraid they'd get sued, too."

Land-use advocates say lawsuits — or threats of suits — like the one in Banks are becoming more common in Oregon.

The typical result: Citizens

who might speak out against developers or proposed projects are choosing to stay silent because of fear of lawsuits and expensive legal fees.

Those who file the lawsuits say they're not attempting to intimidate anyone, but to keep inaccurate information from being spread around.

The tactic is not new. In most instances, the suits are so flimsy that judges simply dismiss them. Yet they have proved effective at quieting opposition.

In recent years, California and a number of other states have taken steps to

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limit the suits, which have been dubbed SLAPPs — strategic lawsuits against public participation.

Oregon could join those ranks next year.

On Friday, the Citizen Involvement Advisory Committee of the Department of Land Conservation and Development will get its first peek at a possible bill that could stymie SLAPPs in Oregon.

The proposal — the "Citizen Participation in Government Act" — could be submitted to the 1999 legislature.

Among the proposed penalties: Citizens who say they've been the targets of such suits would be able to recoup their attorneys' fees.

That seems like a good idea to Fleming.

Even though the Banks lawsuit eventually was thrown out by a federal judge, Fleming and his family were stuck with more than \$10,000 in legal bills.

And it convinced Fleming that Oregonians who speak out in public forums need to be protected.

"If you'd told me before this experience that people could state their opinion and then get sued, I'd have said you were crazy," he said.

"If something doesn't change, there isn't going to be anybody talking at public meetings at all."

## Developers' response

But Jon Chandler, chief lobbyist for the Oregon Building Industries Association, said the state proposal appears too broad.

"Developers shouldn't be allowed to bully people, but good heavens, this thing is a mess," he said. "There is no recourse to statements that are truly slanderous or defamatory."

Public participation is a right, he said, but people need to be responsible. The First Amendment protects free speech but doesn't allow people to yell "fire" in a crowded theater, he said. What's more, he said, there isn't any reliable information about the frequency of SLAPPs in Oregon. "They're trying to fix a problem that doesn't exist."

Nationally, SLAPPs have been filed for activities such as circulating a petition, writing a letter to the editor, speaking at public meetings or demonstrating for law changes, according to the California Anti-SLAPP Project.

# Developer sues resident for defamation

Dan Smith's filing stems from continued battles in St. Paul over growth.

BY JAMES SINKS  
Statesman Journal

2/2/98

ST. PAUL — In this rural town where many people fiercely oppose growth, Newberg developer Dan Smith knows his views aren't always popular.

Now, he's suing a St. Paul resident who, he says, stepped over the line in her criticism.

Smith and his wife have filed a \$500,000 defamation suit in Yamhill County against Mary McKay, who blasted the developer in a letter published in the Newberg Graphic in November. The lawsuit cites seven statements from that letter that Smith says are bogus:

"It was a character assassination with inaccurate facts," he said. "It wasn't a very Christian thing to do."

The statements that Smith contends are libelous refer to "frivolous" legal maneuvers and suggest that he may share some responsibility for the city's drilling its main well without first acquiring a permit.

Smith says all of McKay's statements are false and he can prove it.

"I'm a businessman," he

said. "By trying to make people think ill of me, she's trying to influence future planning decisions."

But the lawsuit has ramifications that may reach beyond this community of 355 surrounded by fields and dairies. Managed-growth advocates say developers are using expensive lawsuits, or the threat of them, as a tool to stifle their opponents.

Reached in Arizona, McKay wouldn't comment about her lawsuit.

Her attorney did not return a phone call Thursday.

Smith said he'll drop the lawsuit if McKay apologizes, but he doesn't expect that to happen. He also insists that the lawsuit isn't meant to quiet his foes.

The handful of residents contacted Thursday didn't want to be quoted in the newspaper, in part because they feared they might be sued.

However, people are definitely talking about it. "It's big news," said Jack Sigler.

Jeff Lamb, chairman of Philomath-based Oregon Communities for a Voice in Annexations, said Smith's lawsuit appears to follow a disturbing new trend: "This is a tactic being used by development interests to silence and intimidate the opposition."

SEE SUIT / 2C

# Suits: Opponents contend problem doesn't exist

The suits have been used to stifle whistle-blowers, critics of pollution or landfills, and even critics of government officials or employees. But they are most common in development debates.

"The land-use arena seems to be the perfect place for these to show up," said Celeste Doyle of the Oregon Attorney General's

office. Doyle researched SLAPPs for the Citizen Involvement Advisory Committee.

Some Oregon cases that appear to follow the SLAPP formula include:

■ **St. Paul resident Mary McKay** is being sued by Newberg investor Dan Smith for her remarks in a letter to the editor in the Newberg Graphic. Few St. Paul residents will now speak to reporters about Smith's development plans.

■ **Salem developer Larry Epping** threatened to sue activist Jerry Scott for publishing profit estimates in a voters guide. A suit wasn't filed.

■ **A Tillamook County developer** sued a number of people and public boards including the Netarts Steering Committee. "His strategy appears to be 'winning through intimidation,'" said Vic Affolter, planning director.

■ **A Columbia County commissioner** threatened to sue anybody who circulated a recall petition.

## Bully or truth-seeker?

But even those cases aren't clear-cut.

For instance, Smith said his lawsuit is based on inaccurate facts in McKay's letter — not her opinions about his temper and "lack of decorum." He has offered to withdraw his suit if she apologizes.

"This SLAPP stuff is nonsense," he said. "And the citizens of St. Paul don't want to talk be-

cause they don't have any facts to oppose me with, and they're using the lawsuit as an excuse."

McKay's attorney has asked the judge to dismiss the case, citing the First Amendment.

Scott says Epping's lawsuit was clearly an attempt to intimidate — and said no case was filed because there wasn't any legal basis for one.

But it was still effective, he said: "It scared the hell out of me."

Dave Hilgemann, the attorney for Epping, said the letter wasn't meant to bully Scott. Rather, it was to stop the publication of inaccurate information.

Epping has said he will release actual profit figures but hasn't done so.

Hilgemann said the state doesn't need any curbs on SLAPPs because judges have the ability to throw them out. Also, if a judge thinks an attorney has filed a frivolous suit, the attorney could face sanctions.

"That's a pretty healthy counter balance," he said.

But Jeff Lamb, executive director of Oregon Communities for a Voice in Annexations, says a ban is long overdue.

"It's an outrage," he said. "We feel these suits are being used by development interests to silence the public. Even if you win, you don't want to say anything the next time around."

Mitch Rohse, policy specialist with the Department of Land Conservation and Development, said it's difficult to say how often

the tactic has been used. "But we know of at least a few instances where they have," he said.

And that's why the department is concerned, he said. Citizen involvement is the cornerstone of the Oregon statewide planning system.

"If they are a big problem, then this sort of action might be appropriate," Rohse said.

Bob Bonaparte, the Portland attorney who represented Fleming, thinks the Banks lawsuit was an isolated case. But with more money riding on land-use approvals, he said it wouldn't surprise him to see others.

Still, some people aren't optimistic that any law changes will occur soon — even if it can be proved that SLAPPs are occurring.

Scappoose attorney Michael Sheehan said developers have found out the suits are effective, so the public should expect more of them. And he's not expecting any help from the Legislature.

"Developers know they've got a stacked deck in Salem," he said. "We're right at the beginning of this."

And Robert Liberty, executive director of land-use watchdog 1000 Friends of Oregon, says legal intimidation isn't limited to SLAPPs. In many cases, developers and builders simply exhaust the financial resources of opponents.

In some cases, the developers can write off legal fees as a cost of doing business, he said. "Citizens don't get to do that."

## How to comment

Citizens can comment on a proposal to discourage SLAPPs — strategic lawsuits against public participation — at 9 a.m. Friday at the Department of Land Conservation and Development, 1175 Court St. NE.

Here are some excerpts from the measure:

■ **"The threat of financial liability, litigation costs, loss of business, loss of one's home, and other personal losses from groundless lawsuits seriously affects state government by diminishing citizen participation . . ."**

■ **"Although some citizens' communications to government inevitably will be incorrect,**

unsound, self-interested or not in good faith, it is essential to democracy that the constitutional rights of citizens to participate be . . . protected and encouraged."

■ **"Acts involving a citizen's constitutional right to petition, inform, communicate with, or otherwise participate in the processes of government shall be immune from civil liability."**

■ **If a SLAPP suit is dismissed, the court shall make the person who filed the suit responsible for "costs of litigation, including reasonable fees for attorneys and expert witnesses."**

■ **Targets of SLAPPs may seek actual and punitive damages.**